

McLAREN AFFIRMATION

STATEMENT OF WITNESS

Statement of : Douglas James McLaren

Age of Witness (Date Of Birth): 54 (21 September 1959)
Occupation of Witness: Deputy Commissioner of Inland Revenue
Address and Telephone Number: Inland Revenue Department, Woods Centre, Friars Hill
Road, St. John's, Antigua and Barbuda
1 268 468 9485

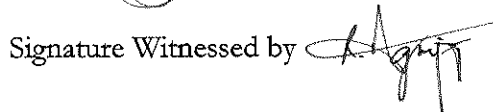
This statement, consisting of 2 pages each signed by me, is true to the best of my knowledge and belief, and I make it knowing that, if it is tendered in evidence, I shall be liable to prosecution if I wilfully stated anything which I know to be false or do not believe to be true.

Dated the 4th day of November 2013.

Signed



Signature Witnessed by



1. I am employed by the Ministry of Finance of the Government of Antigua and Barbuda and currently hold the post of Deputy Commissioner of Inland Revenue. At the time of my involvement in this matter I then held the post of Director of ABST implementation within the Inland Revenue Department, which gave me overall responsibility for the operations of the ABST unit and the application and enforcement of the legal provisions of the legislative instruments thereto.
2. On Friday 31st August 2007 I wrote to the American University of Antigua College of Medicine (hereinafter referred to as AUA) regarding the application of ABST to their operations. In particular I dealt with the receipt of both goods and services in connection with their operations within the free trade and processing zone. I drew their attention to 14(c) (d) and 18 (3) of The Free Trade and Processing Zone Act 1994 and advised that the receipt of goods and services into the free trade and processing zone would be treated as exports from Antigua and Barbuda and Imports into the said zone. (A copy of the letter consisting of 2 pages is attached to this statement and is numbered McLaren 1).
3. This letter effectively advised the recipient that their receipt of goods and services would be relieved of ABST as exports from Antigua and Barbuda. This means that all materials and

construction services supplied in relation to the building situated within the free trade and processing zone would have ABST applied at 0% being exports of goods and services.

4. Section 34 (1) of the Antigua and Barbuda Sales Tax Act 2006 reproduced herein details the procedures which should be used where the supplier has erroneously charged the tax on a supply for which an original tax invoice has already been issued.

34. (1) If

- (a) a registered supplier has made a taxable supply to a registered recipient;*
- (b) an ABST adjustment event has occurred in relation to the supply;*
- (c) at the time of the supply, the supplier issued an original ABST invoice to the recipient; and*
- (d) the amount shown on that invoice as the ABST charged exceeds the ABST properly chargeable in respect of the supply, the supplier must provide the recipient with an original ABST credit note.*

5. This means that the supplier has the responsibility to correct their own error and ensure where an amount has already been paid to repay that amount to the customer as the amount previously shown is not in fact tax. In such a case this would then provide where such credit was granted that if the supplier was then placed in a credit position in respect of its liability to the Government and such credit met the legal tests laid down for a refund to be made to the supplier. There could be no position where the recipient of the goods and services would be eligible to be refunded by the Government.
6. In the period following my letter of Friday 31st August 2007 I understand that a number of contractors including Leeward Construction Company Limited requested that AUA pay the ABST on supplies as they did not accept their assurances that ABST was relieved. Accordingly AUA did so and sought a refund from the Government of Antigua and Barbuda. When this was brought to my attention I instructed the officer dealing with AUA at that time to return to the suppliers and utilize my letter of Friday 31st August 2007 to require that they repay the monies to AUA as they had been erroneously charged. This she did in her email of Tuesday 17th November 2009. (Numbered McLaren 2)
7. In this case I have examined the declarations of the taxpayer concerned, that being Leeward Construction Company Limited and they have neither declared nor paid tax as required by law on a monthly basis in respect of all their activities, and I am unaware that they have issued any ABST credit notes as required by Section 34 of the Antigua and Barbuda Sales Tax Act 2006, with regard to this particular project.

Signed



Signature witnessed by



Page no 2 of 2

Continuation of witness statement of: Douglas James McLaren



ABST Division
Inland Revenue Department
Newgate Street
St. Johns
Antigua

Government of Antigua & Barbuda

Tel No 562 5823

Fax No 462 3175

American University of Antigua
College of Medicine
Jasmine Court
PO Box W1451
St. John's
Antigua

Friday 31st August 2007

Dear Sirs

I write with regard to the treatment of the University under the newly implemented Antigua and Barbuda Sales Tax, and your correspondence in this regard and the subsequent meetings with your representatives and the Minister of Finance and the Economy and the author.

Subsequent to our meetings and discussions I have reviewed the various pieces of legislation which impinge on the taxation of imports and domestic supplies to the University. In the first instance as previously communicated the Antigua and Barbuda Sales Tax Act 2006 makes no provision for the waiver of the tax and therefore makes all imports into and purchases within Antigua and Barbuda subject to ABST at the rates defined within the Act.

There are therefore two areas that required consideration, those being the construction of the University premises within the Free Trade and Processing Zone, and its future activities within that zone. The second being the current activities carried on at Friars Hill Road and Jasmine Court. I shall address each area in turn

Activities within the Free Trade and Processing Zone

The Free Trade and Processing Zone Act 1994 contains a number of provisions dealing with the treatment of licensees (which I understand you to be). Section 14 (c) and (d) (reproduced below) allows for the importation of materials for the construction of premises and for the operations carried on within the Free Trade and Processing Zone. This would cover direct imports and relieve them from ABST.

14. Notwithstanding any law to the contrary, and subject only to this Act a licensee shall, during the currency of his licence be-
(c) exempted from the payment of taxes and other duties on the importation of machinery, equipment, spare parts, construction material and other items needed to construct and operate facilities within the free trade and processing zone;

McLaren 1



ABST Division
Inland Revenue Department
Newgate Street
St. Johns
Antigua

Government of Antigua & Barbuda

Tel No 562 5823

Fax No 462 3175

(d) exempted from payment of duty and other taxes on the importation of raw materials and other goods to be incorporated in the products produced or assembled within or to be utilized in the performance of services within the free trade and processing zone.

Sections 18 (3) of The Free Trade and Processing Zone Act 1994 (reproduced below) allows for domestic supplies of both goods and services to a licensee in the Zone to be treated as imports into the zone and exports from Antigua and Barbuda. This would cover domestic supplies into the Zone and relieve them from ABST.

18. (3) Any goods and services sold by companies within Antigua and Barbuda and sent into the Free Trade and Processing Zones shall be considered as imports into the Free Trade and Processing Zone and as exports from Antigua and Barbuda.

Current Operations at Friars Hill Road/Jasmine Court

Since these areas are currently outwith the Zone then none of the above applies to supplies received in respect of these operations. Section 27(1)(a) of The Free Trade and Processing Zone Act 1994 (reproduced below) allows the Minister with responsibility for Trade to make regulations Governing the operation of the Zone and I shall be discussing with the Minister of Finance and the Economy how these provisions may be utilised to include the current premises in the Zone thus bringing the above provisions to bear.

***27. (1) The Minister may, with the approval of the Cabinet, make regulations relating to -
(a) the management, supervision, control and operation of a free trade and processing zone;***

I shall communicate further once the Minister has considered further the Ministries position in how we can further assist the University's development program.

Yours faithfully

DJ McLaren
Director ABST Implementation

McLaren 2

From: Lyle Novick
Sent: Tuesday, November 17, 2009 11:45 AM
To: Williams, Jackie
Cc: Matt Petersen; Basil Stuart
Subject: FW: American University of Antigua-ABST Taxes

Just received this email from the American University of Antigua-ABST Taxes department.

Lyle S. Novick
Manager of Financial Reporting
American University of Antigua
c/o GCLR, LLC
2 Wall Street 10th Floor
New York, NY 10005
Tel 212.661.8899 Ext. 168
lnovick@auamed.org

From: Cleo T. Wallace [mailto:cleotwallace@gmail.com]
Sent: Tuesday, November 17, 2009 11:30 AM
To: Lyle Novick; Cleo T. Wallace
Subject: Fwd: American University of Antigua-ABST Taxes

Dear Mr. Lyle Novick,

In the response to your email, Mr. Doug McLaren the Director of the Antigua and Barbuda Sales Tax informed me that a letter was written to your establishment pertaining to the ABST. The Letter dated 31 August 2007 stated that Activities within the Free Trade and Processing Zone Act 1994 contains a number of provisions dealing with the treatment of licenses which I understand you to be. Section 14 (c) and (d) reproduced below allows for the importation of materials for the construction of premises and for the operations carried on within the Free Trade and Processing Zone. This would cover the direct imports and relieve them from ABST.

Section 14 Notwithstanding any law to the contrary and subject only to this Act a licensee shall during the currency of his license be - (c) exempted from the payment of taxes and other duties on the importation of machinery, equipment, spare parts, construction material and other items needed to construct and operate facilities within the free trade and processing zone. (d) exempted from payment of duty and other taxes on the importation of raw materials and other goods to be incorporated in the products produced or assembled within or to be utilized in the performance of services within the free trade and processing zone.

Section 18 of the Free Trade and Processing Zone Act 1994 allows domestic supplies of both goods and services to a licensee in the Zone to be treated as imports into the zone and exports from Antigua and Barbuda. This would cover domestic supplies into the zone and relieve them from ABST. (3) Any goods and services sold by companies within Antigua and Barbuda and sent into the Free Trade and processing Zone shall be considered as imports into the Free Trade and Processing Zone and as exports from Antigua and Barbuda.

We are therefore advising you to return to the business places to recover the ABST that was spent. When approaching the Manager you will have to provide them with the letter dated 31st August 2007 which was sent

McLaren 2

to Mr. Basil Staurt the Administration Director of the American university of Antigua, with regards to the provisions that were made.

If any problems occur you can inform me Ms. Cleo Wallace ABST Registration Supervisor, Ms. Nerissa Gomes Audit Supervisor, Everton Gonsalves, Coordinator of ABST Implementation Team or Douglas McLaren The Director of ABST.

Waiting for a quick response.

Sincerely,

Cleo Wallace
ABST Registration Supervisor

On Tue, Nov 17, 2009 at 9:53 AM, Lyle Novick <lnovick@auamed.org> wrote:

Ms Wallace:

Could you please provide me the link or the website address so I can get this refund form.

Thanks so much for all your help.

Lyle S. Novick

Manager of Financial Reporting
American University of Antigua
c/o GCLR, LLC
2 Wall Street 10th Floor

New York, NY 10005
Tel 212.661.8899 Ext. 168

lnovick@auamed.org

From: Cleo T. Wallace [<mailto:cleotwallace@gmail.com>]
Sent: Tuesday, November 17, 2009 8:45 AM
To: Lyle Novick
Subject: Re: American University of Antigua-0409-0509

Dear Mr. Lyle Novick,

I received your emails and I am printing them now. I will deliver them to Mr. McLaren so that he can review them. On the Government Website you can print the Refund form and fill out the necessary information. You can email it to me or you can fax it to me at The Inland Revenue Department. The Fax Number is 1-268-462-3175.

Thanking you in advance

Ms. Cleo Wallace
ABST Registration Supervisor

On Mon, Nov 16, 2009 at 2:49 PM, Lyle Novick <lnovick@auamed.org> wrote:

Ms Wallace:

Hi:

Did you receive my emails?

Thanks

Lyle S. Novick

Manager of Financial Reporting
American University of Antigua
c/o GCLR, LLC
2 Wall Street 10th Floor

New York, NY 10005
Tel 212.661.8899 Ext. 168

lnovick@auamed.org

From: Lyle Novick
Sent: Monday, November 16, 2009 12:28 PM

To: 'CleoTWallace@gmail.com'
Cc: 'revenue@antigua.gov.ag'

Subject: RE: American University of Antigua-0409-0509

McLaren 2

Lyle S. Novick

Manager of Financial Reporting
American University of Antigua
c/o GCLR, LLC
2 Wall Street 10th Floor

New York, NY 10005
Tel 212.661.8899 Ext. 168

lnovick@auamed.org

From: Lyle Novick
Sent: Monday, November 16, 2009 12:27 PM
To: 'CleoTWallace@gmail.com'
Cc: 'revenue@antigua.gov.ag'
Subject: RE: American University of Antigua-0209-0409 ABST Taxes backup

Lyle S. Novick

Manager of Financial Reporting
American University of Antigua
c/o GCLR, LLC
2 Wall Street 10th Floor

New York, NY 10005
Tel 212.661.8899 Ext. 168

lnovick@auamed.org

From: Lyle Novick
Sent: Monday, November 16, 2009 12:26 PM
To: 'CleoTWallace@gmail.com'
Cc: 'revenue@antigua.gov.ag'
Subject: RE: American University of Antigua-9/08-2/09 ABST Taxes backup